BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of **BERNARD J. MILLER, M.D.** Holder of License No. 7421 For the Practice of Allopathic Medicine In the State of Arizona	Case No. MD-06-0988A **CONSENT AGREEMENT FOR LETTER OF REPRIMAND**

CONSENT AGREEMENT

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and Bernard J. Miller, M.D. ("Respondent"), the parties agreed to the following disposition of this matter.

1. Respondent has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement"). Respondent acknowledges that he has the right to consult with legal counsel regarding this matter.

2. By entering into this Consent Agreement, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. This Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. The Board may adopt this Consent Agreement of any part thereof. This Consent Agreement, or any part thereof, may be considered in any future disciplinary action against Respondent.

5. This Consent Agreement does not constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does not constitute any waiver,

express or implied, of the Board's statutory authority or jurisdiction regarding any other pending or future investigation, action or proceeding. The acceptance of this Consent Agreement does not preclude any other agency, subdivision or officer of this State from instituting other civil or criminal proceedings with respect to the conduct that is the subject of this Consent Agreement.

6. All admissions made by Respondent are solely for final disposition of this matter and any subsequent related administrative proceedings or civil litigation involving the Board and Respondent. Therefore, said admissions by Respondent are not intended or made for any other use, such as in the context of another state or federal government regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or any other state or federal court.

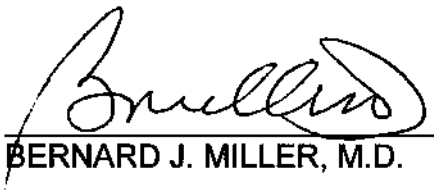
7. Upon signing this agreement, and returning this document (or a copy thereof) to the Board's Executive Director, Respondent may not revoke the acceptance of the Consent Agreement. Respondent may not make any modifications to the document. Any modifications to this original document are ineffective and void unless mutually approved by the parties.

8. If the Board does not adopt this Consent Agreement, Respondent will not assert as a defense that the Board's consideration of this Consent Agreement constitutes bias, prejudice, prejudgment or other similar defense.

9. This Consent Agreement, once approved and signed, is a public record that will be publicly disseminated as a formal action of the Board and will be reported to the National Practitioner Data Bank and to the Arizona Medical Board's website.

10. If any part of the Consent Agreement is later declared void or otherwise unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force and effect.

11. Any violation of this Consent Agreement constitutes unprofessional conduct and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) ("[v]iolating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter") and 32-1451.



BERNARD J. MILLER, M.D.

DATED: 8/22/07

FINDINGS OF FACT

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of license number 7421 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-06-0988A after receiving notification of a malpractice settlement involving Respondent's care and treatment of a thirty-seven year-old male patient ("PS").

4. On June 25, 2004, PS presented to Respondent for outpatient elective surgery of tonsillectomy and uvulectomy. Prior to the surgery, Respondent noted a diagnosis of sleep apnea and snoring; however, he did not perform a polysomnography (sleep study) evaluation and a continuous positive airway pressure (CPAP) trial to confirm his diagnosis. Additionally, a preoperative electrocardiogram (EKG) indicated PS could have possible septal infarction; however, Respondent did not address the abnormal EKG, including obtaining cardiac clearance before proceeding with the elective surgery.

5. On June 28, 2004, PS returned to Respondent's office with bleeding. Another physician cauterized the site using silver nitrate to control the bleeding and sent PS home. PS bled again later that day and was transported to the emergency department while in cardiac arrest. PS could not be resuscitated and he subsequently died.

6. The autopsy report concluded PS had left ventricular hypertrophy, severe coronary atherosclerosis of the left anterior descending coronary artery and fibrosis of the anterior left ventricle. The report also indicated exposure of a 0.1 centimeter branch of the carotid artery in the surgical field.

7. Prior to surgery, the standard of care requires a physician to make a complete evaluation, assess and identify all possible risks to surgery and to explore all possible conservative measures.

8. Respondent deviated from the standard of care because he failed to make a complete evaluation, assess and identify all possible risks to surgery and explore all possible measures. Respondent did not address the possible septal infarction and performed the surgery without taking additional measures, including obtaining cardiac clearance, performing a polysomnography evaluation and performing a CPAP trial.

9. As a result PS hemorrhaged, went into cardiac arrest and died.

CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter hereof and over Respondent.

2. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401 (27)(ll) ("[c]onduct that the board determines is gross negligence, repeated negligence or negligence resulting in harm to or the death of a patient.").

ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand for failure to obtain a cardiac clearance prior to elective surgery, for failure to address a possible septal infarct on the electrocardiogram and for failure to perform a polysomnography and/or trial of continuous positive airway pressure before performing the tonsillectomy.

2. This Order is the final disposition of case number MD-06-0988A.

DATED AND EFFECTIVE this 12th day of October, 2007.

(SEAL)

ARIZONA MEDICAL BOARD

By _____
TIMOTHY C. MILLER, J.D.
Executive Director

ORIGINAL of the foregoing filed
this 12th day of October 2007 with:

Arizona Medical Board
9545 E. Doubletree Ranch Road
Scottsdale, AZ 85258

EXECUTED COPY of the foregoing mailed
this 12th day of October, 2007 to:

Bernard J. Miller, M.D.
Address of Record

_____
Investigational Review